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BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP	GARY PIERCE	BOB BURNS
CHAIRMAN	COMMISSIONER	COMMISSIONER

SUSAN BITTER SMITH	BRENDA BURNS
COMMISSIONER	COMMISSIONER

IN THE MATTER OF THE PROPOSED RULEMAKING TO MODIFY THE RENEWABLE ENERGY STANDARD AND TARIFF RULES IN ACCORDANCE WITH ACC DECISION NO. 74365.	)	**DOCKET NO. RE-00000C-14-0112**
	)	
	)	**REPLY COMMENTS OF THE ALLIANCE FOR SOLAR CHOICE (TASC)**

REPLY COMMENTS OF THE ALLIANCE FOR SOLAR CHOICE ON PROPOSED RULEMAKING

The Alliance for Solar Energy Choice (TASC) supports the comments filed in this proceeding by the Solar Energy Industries Association (SEIA). The reasons for our support are contained in the documents filed by various parties in dockets E-O1345A-10-0394, E-01345A-12-0290, E-01933A-12-0296 and E-04204A-12-0297. TASC hereby incorporates by reference the arguments and testimony filed in those cases, including but not limited to the documents attached to this filing.

Respectfully submitted this 14th day of November, 2014.

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Original and 13 copies filed on this 14th day of November, 2014 with:

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Surrebuttal Testimony of David Berry

Docket Nos. E-01345A-10-0394, E-01345A-12-0290, E-01933A-12-0296,
and E-04204A-12-0297

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Introduction

Q. Please state your name.

A. My name is David Berry.

Q. Did you previously file testimony in this matter?

A. Yes, on behalf of Western Resource Advocates (WRA).

Q. What is the purpose of your surrebuttal testimony?

A. I address: a) the central issues in this docket, b) controlling cost exposure when utilities purchase renewable energy credits or certificates (RECs), c) protecting the value of RECs, and d) RUCO's proposed temporary 50/50 split of RECs.

The Central Issues in This Docket

Q. What are the central issues facing the Commission in this proceeding?

A. While there are numerous disagreements among the parties (some of which are discussed below), the central issues before the Commission are:

a) minimizing the utilities' costs of fostering distributed renewable energy,
b) encouraging early adoption of distributed renewable energy and innovation in distributed renewable energy markets, thereby introducing a modest amount of competition into the electricity market through distributed renewable energy, and
c) protecting the value of RECs from actions which devalue those RECs.

Currently, direct incentives for distributed renewable energy are at or close to zero **but the role of incentives in the future depends on whether and how the Commission modifies net metering practices and changes rate designs**. These changes will play out over time and cannot be accurately projected or permanently settled today. **The Commission should not box itself in by eliminating the distributed renewable energy requirement at this time as proposed by the utilities and should not destroy the value of RECs as proposed by Staff.**

Q. Staff says that getting more information as proposed by WRA would cause an unnecessary delay in resolving the issue of how to implement the distributed renewable energy requirement when incentives are no longer needed (Staff rebuttal, page 2, starting on line 20). Does WRA's proposal cause an unnecessary delay?

A. No. First of all, Staff's proposed Track and Monitor approach devalues customers' RECs and should not be implemented at all. Second, the utilities' proposal to eliminate the distributed energy requirement is premature. The Commission's consideration of

eliminating the distributed energy requirement should take into account decisions on net metering and rate design changes that it has not yet made. Depending on those future changes, retention of the distributed renewable energy requirement and a REC acquisition method may be necessary. A "delay" in accepting the utilities' proposal is, therefore, quite appropriate. A temporary waiver of the distributed energy requirement until net metering issues have been resolved and a REC acquisition method is adopted is also appropriate. During the waiver period, the utilities could report kWh of energy produced by distributed renewable energy projects to the Commission for informational purposes; because there would be no distributed renewable energy requirement in effect, there would be no conflict over ownership of RECs.

Q. Have other parties expressed similar concerns about a hasty resolution of the role of RECs, the distributed renewable energy requirement, and incentives for distributed renewable energy?

A. Yes. SEIA's and Vote Solar's direct testimony recognize the multiple factors and processes that affect the development of a just and reasonable resolution. Also, RUCO recognizes the many moving parts that must be considered (RUCO rebuttal, p. 6). RUCO states that "finding a solution in an ever changing market presents a unique challenge" (rebuttal, p. 6, lines 7-8), that it is necessary to "give the process time" (rebuttal, p. 6, line 11), and that "the current system of REC transfer and viability of potential policies solutions ... could be greatly impacted by the end result of the technical conference (on net metering) and subsequent Commission decision" (rebuttal, p. 6, lines 17-20).

Controlling Costs When Utilities Purchase RECs

Q. Staff is concerned that using an auction type of approach to obtain RECs would lead to uncertain costs of meeting the requirements of the Renewable Energy Standard because the winning bid prices are uncertain (rebuttal p. 7, starting on line 25). What is the major cause of this uncertainty?

A. The major cause is uncertainty about future Commission actions regarding net metering practices and rate design changes. Potential changes to net metering practices and to rate designs increase the risk to the customer contemplating an investment in distributed renewable energy. Today, because the cost of distributed solar energy and retail electric rates are about the same for many customers, incentives are not needed in many cases and REC prices in Arizona are therefore likely to be low.[1] However, changes or potential changes in net metering practices or rate designs could very well increase the need for direct incentives to encourage distributed renewable energy, resulting in increased REC prices.

[1] In general, the price of a REC is the difference between the cost of electricity generated with renewable energy and the cost of conventionally generated electricity. See my direct testimony, page 4, starting on line 32.

Q. Staff is also concerned that the Commission would have no direct control over the level of incentives if an auction process were used (Staff rebuttal, p. 7, lines 13-14; p. 9, lines 9-10). How can the Commission exercise control over the budget?

A. The Commission could establish an annual budget in its regular review of implementation plans, based upon information provided by stakeholders, upon proposed budgets developed by the utilities, and upon prior years' experience with REC prices. As an alternative to an auction, WRA also proposed a technical conference approach to determine whether incentives would be needed. If incentives are needed, they could be set administratively or via an auction. In either the auction approach or the administrative approach, the Commission could establish an annual budget for incentives in its regular review of implementation plans.

Q. Could utilities include a "standard offer" bid price in soliciting bids in order to better estimate the budget for an auction process?

A. Yes.

Q. Staff indicates that sellers of RECs in an auction process would be able to manipulate the market and force up REC prices (Staff rebuttal, p. 8, lines 16-24). Is this a serious issue?

A. Not if the utilities adopt a well-designed auction process, based upon their previous experience with bidding processes and experience in other states with auctions. Results of the auctions should be made public, audited by or for Staff, and reviewed by the Commission. Further, Arizona experience demonstrates a strong interest in distributed generation by customers. Thus, market manipulation would require thousands of customers to strategize in a coordinated manner to hold up the utilities. It is more likely that the customers and their contractors would compete with each other to offer as low a bid as they would need to proceed with their projects.[2] Losing bidders get no incentive.

Protecting the Value of Renewable Energy Credits (RECs)

Q. Did Staff address the devaluation of RECs due to double counting inherent in its Track and Monitor proposal in either its direct testimony or rebuttal?

A. No. The devaluation problem remains a major shortcoming in Staff's recommendations as explained in my rebuttal testimony. Also, for the same reasons as explained in my rebuttal testimony, customers would not be able sell their RECs under a track and monitor approach despite TEP's and UNS's opinion to the contrary (TEP & UNS rebuttal page 3, starting at line 13).

[2] To further dilute the market power of REC sellers, utilities could accept bids only from individual project owners and not from REC aggregators.

Q. Wal-Mart's rebuttal testimony (page 3, starting at line 10 and page 3, starting at line 17) references WRA's direct testimony and indicates that: a) if a utility were granted a temporary waiver from the distributed energy requirement there would be no obligation for it to comply with, and b) the information provided to the Commission on kWh of energy produced by distributed renewable energy facilities would be for informational purposes and not for satisfying any type of compliance obligation. Wal-Mart concludes that "contrary to the suggestion of some other parties, it appears that kWhs reported to the Commission, but not claimed to be satisfying a utility's RES DE requirement (because that requirement was waived for a given year), or any other portion of the utility's RES requirements, would not result in double counting ..."(p. 5, lines 8-12). Do you agree with Wal-Mart on this point?

A. Yes. Wal-Mart's interpretation is the same as that in my direct testimony (page 10, lines 6 through 19, including footnote 16). There would be no double counting of RECs associated with projects during the waiver period because there is no regulatory requirement pertaining to distributed renewable energy in force.

Q. Tucson Electric Power Company and UNS Electric, Inc. (TEP & UNS) continue to maintain that any value of RECs to the Affected Utilities is the result of the legal fiction created under the Renewable Energy Standard and that renewable energy credits are a means of tracking compliance (TEP & UNS rebuttal p. 5, lines 13-18). Does TEP & UNS's view constitute a fair and complete understanding of RECs?

A. No. First, renewable energy comes with environmental and other attributes. Property rights in these attributes are separable from the rights to electric energy (kWh) generated by renewable resources and are traded in REC markets. "Unbundling" of attributes from an underlying good or service is not unique to renewable energy. For instance, development rights can be unbundled from land. Separable development rights underlie such practices as public purchase of development rights to preserve open space, acquisition of development rights by land trusts to preserve open space, and use of transferable development rights to preserve open space.

Second, RECs associated with Arizona distributed renewable energy projects (and central station renewable energy projects) would exist even if there were not a Renewable Energy Standard in Arizona. Those RECs could be purchased by parties other than Arizona utilities through voluntary or compliance markets or retained by their owners to demonstrate that they are meeting their own clean energy goals.

Third, A.A.C. R14-2-1803 clarifies the property rights in RECs. Property rights demarcate ownership of tradable credits and enable a clear transfer of control of the credits. Without a clear assignment of rights in tradable credits, the Commission and the utility could not be sure that the portfolio standard was being met. Additionally, without a clear assignment of rights, owners of renewable generation equipment could not be sure of their ability to capture the revenues from the production of eligible energy for which they have incurred

the costs. Further, buyers of RECs could not be sure that they aren't being swindled if property rights are not clearly defined and enforceable.

Thus, RECs are not a fiction. They are real and exist whether or not TEP & UNS track them or acquire them. Further, ambiguous property rights and double counting are real economic problems that are addressed by the Commission's Renewable Energy Standard.

RUCO's Proposed Temporary 50/50 Split of RECs

Q. RUCO proposes splitting RECs 50/50 between the system owner and the utility to temporarily resolve the issue of REC transfers and payments in the absence of incentives if the Commission does not act on proposed net metering changes for "some time" (RUCO rebuttal, starting on p. 7, line 19). How does RUCO envision the 50/50 split would work?

A. RUCO views the system owner/investor and the utility as "partners" – one providing the capital and space to host the system and the other integrating the system into the grid. The 50/50 split of RECs is intended to be a compromise in which the customer would, apparently, transfer half of his or her RECs to the utility for free. RUCO indicates that commercial customers needing to retain all their RECs to meet their own goals would not have to transfer any of their RECs to the utility.

Q. Is a 50/50 split a workable approach?

A. Probably not – there are too many unanswered questions and too many inappropriate assumptions. First, system owners and utilities are not partners – they are parties to a potential transaction, just as a utility and an independent power producer are parties to a transaction to sell and purchase electricity. The parties have different objectives that may be met by making a deal. The parties also have the option of not making a deal.

Second, there is no "compromise" unless the affected parties agree to it. A "compromise" cannot be imposed on customers by the Commission or the utilities. In this case, RECs are initially owned by the owners of the distributed renewable energy systems. RUCO's proposal requires customers to hand over some of their property (RECs) to a utility without compensation from the utility in order to obtain electric service. Why should customers agree to hand over half their RECs to the utility in return for getting interconnection service they are otherwise currently entitled to as utility customers? How would the utilities know whether the customers have affirmatively agreed to transfer half their RECs and thus be able to count the RECs? How could a customer be prevented from seeking compensation from the utility for the utility's claiming ownership of the customer's RECs?

Third, what is the utility going to do with half the RECs? Would the utility have to try to get customers to install twice as much distributed renewable energy as they otherwise would in order to obtain sufficient RECs to meet regulatory requirements? How would they do this without paying for the RECs?

Conclusions

Q. What should the Commission do in this matter?

A. Because of the interconnections among the Renewable Energy Standard, the distributed renewable energy market, net metering policy, and rate design, a rush to change current practices is counter-productive. In a complex system of interconnected factors, the Commission cannot do just one thing. A comprehensive approach must be considered.

The Commission should reject Staff's Track and Monitor proposal, reject RUCO's 50/50 split proposal, and hold off on eliminating the distributed renewable energy standard as proposed by the utilities until there is concrete evidence that the distributed renewable energy market can stand on its own without incentives, taking into account the effects of any changes in net metering policy and significant changes in rate designs that affect the economics of investor decisions regarding distributed renewable energy.

For now, the Commission should direct the utilities to either develop and implement an auction type approach to acquire RECs or conduct a technical conference to obtain more information. If the technical conference indicates that incentives are still needed because, for example, the Commission modifies net metering practices, utilities could continue to obtain RECs for distributed resources by employing the methods they previously used or by using an auction.

Until the auction is set up or the technical conference is concluded (and appropriate direction given by the Commission on the basis of the technical conference), the Commission should, temporarily, waive compliance with the distributed renewable energy requirements.

Q. Does this conclude your surrebuttal testimony?

A. Yes.

Western Resource Advocates ("WRA") and The Vote Solar Initiative ("Vote Solar") submit this Opening Brief.

I. INTRODUCTION

This case is about what, if anything, needs to be done if incentives for the installation of distributed renewable energy facilities are eliminated. If the incentives are eliminated, then the renewable energy credits ("RECs") associated with installations will not be transferred to the utility companies. If the renewable energy credits are not transferred, then the utilities cannot count the RECs produced by those installations because they will not own them. That means that at some point the utilities may potentially be out of compliance with the distributed energy requirement in the Commission's Renewable Energy Standard and Tariff ("REST") rules.

The parties have set forth numerous proposals for the Commission's consideration to address this potential problem. Some parties have advocated for proposals that go well beyond what is necessary to address the very narrow problem presented in this proceeding. However, it is important for the Commission to proceed with caution. There are numerous circumstances affecting the market for the deployment of distributed solar energy facilities and the incentives are just one part of a larger issue. That issue is whether the Commission will continue to support the deployment of distributed solar energy for residential and nonresidential customers.

Resolution of the matters in this proceeding is closely related to the resolution of the net metering application filed by APS on July 12, 2013 in Docket No. E-01345A-13-0248. Therefore, the Commission should do what is minimally necessary to address the problem regarding the acquisition of RECs in this proceeding and retain as much flexibility as possible to address net metering and other issues as they affect distributed

renewable energy production in the future. Even APS's net metering application suggests that incentives may be necessary if the net metering practices of the proposal have a negative effect on the deployment of distributed energy (APS net metering application, pp. 2, 14-15). It is obviously premature to assume that incentives will be eliminated. The Commission should retain the flexibility it needs to make use of incentives if net metering practices are changed.

II. SCOPE OF THIS PROCEEDING

In Decision No. 73636, the Commission directed:

> ...[T]he hearing division to schedule a procedural conference, entertain requests for intervention, hold a hearing, and prepare a recommended opinion and order ("ROO") for Commission consideration on the "track and record" proposal and potential alternatives. The ROO should evaluate whether adoption of the "track and record" proposal (or alternatives thereto) would require modifications to the REST rules. Decision No. 73636 at 6.

There is nothing in the Commission's direction to indicate that some kind of seismic policy shift was being contemplated. APS had identified what it believes is a problem concerning acquisition of RECs if incentives are no longer made available and the Commission directed the Hearing Division to address that problem and that problem only. There is no hint in the direction from the Commission that it wanted to change the Renewable Energy Standard or eliminate the distributed energy carve out. If those issues are to be considered by the Commission, it should be done in an appropriate proceeding. This case is not that proceeding.

III. IDENTIFYING THE PROBLEM

At the outset, it is important to consider what problem we are trying to address in this proceeding. The fundamental problem is that there may come a day, if incentives are eliminated, when the utilities are unable to comply with the REST rules because they

cannot acquire the necessary RECs. The REST rules determine compliance by counting RECs. A.A.C. R14-2-1805(A) provides that:

> In order to improve system reliability, each effected utility shall be required to satisfy a distributed renewable energy requirement by obtaining renewable energy credits from distributed renewable energy resources.

A renewable energy credit means "the unit created to track kWh derived from an eligible renewable energy resource or kWh equivalent of conventional energy resources displaced by distributed renewable energy resources." A.A.C.R. 14-2-1801 (N).

Arizona Public Service Company is compliant with the distributed energy carve out for residential customers through the end of 2016 and for commercial customers through the end of 2019. Therefore, the earliest that APS will have any kind of issue with compliance is at the beginning of 2017. A lot can happen between now and then. For example, Commission action in the net metering proceeding may lead the Commission to require that incentives be provided to customers for the installation of distributed energy. If incentives are either continued or reactivated between now and the end of 2016, then it is unlikely that APS will have any problem that needs solving.

TEP and UNS are currently compliant with the DE carve out and will be through the end of 2013. TEP is compliant for commercial distributed energy through the end of 2016. The RES implementation plan filed by TEP on July 1, 2013 in Docket No. E-01933A-13-0224, has proposed three options with regard to distributed energy. The first is to maintain a $0.10 per watt upfront incentive for residential projects and non-residential projects (up to 70 kW). The second is to maintain the $0.10 per watt upfront incentive for residential projects only, and the third is to provide no new additional incentives. Depending on the Commission's disposition of TEP's request, it may well be that TEP will continue to acquire RECs through 2014 at a minimum.

Therefore, at least for APS and TEP, if they have a problem it is not immediate and it is not substantial. In fact, if nothing is done in this proceeding, there is nothing in the REST rules to prevent them from acquiring RECs from customers with new installations by purchase or otherwise. As APS itself indicated at the hearing, the current purchase price for RECs is approaching zero. As the witness for Vote Solar testified, APS and TEP might be able to acquire RECs with gift cards from Starbucks.[1]

That being the case, one has to wonder why both APS and TEP have proposed elimination of the distributed energy carve out as a long term solution. We don't even know what the short term holds in store for us much less the long term, but at least based on current circumstances, the acquisition of RECs would appear to be a relatively small expense for the utilities. Even if at the time of acquisition the expense is more than minimal, APS and TEP can file an appropriate application for relief with the Commission.

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[1] During the hearing the relationship between incentives and the price of RECs was discussed. As the Commission's Renewable Energy Standard has been implemented, the incentive offered by utilities for distributed renewable energy projects is equal to the REC price. In a well-functioning REC market, "the difference between the market price of electricity generated with renewable resources and the market price of electricity generated by conventional means represents the premium for energy from renewable resources. ... The price of tradable credits equals the premium for renewable energy" (David Berry, "The Market for Tradable Renewable Energy Credits," *Ecological Economics*, vol. 42, no. 3, September 2002, p. 374). "[M]arket forces will tie the price of tradable credits to the cost difference between generating electricity from renewable resources and generating electricity from conventional resources" (Berry, p. 377). To overcome the disincentive attributable to the cost premium for renewable energy, utilities offer an incentive to customers to invest in distributed solar energy. The incentive should equal the cost premium which equals the REC price.

IV. THE ORIGINAL TRACK AND RECORD PROPOSAL

In APS' 2013 REST implementation plan, the Company proposed no new incentives for residential and non-residential distributed energy in 2013. In response, Staff proposed a $0.10 per watt incentive so that APS could determine whether incentives would be helpful in 2014. Assuming that there would be no incentives in future years, APS proposed a "Track and Record" method of meeting the REST requirements.

The Track and Record proposal assumes that no incentives would be provided but would count the energy produced from such installations toward compliance with the REST standard for distributed energy. Numerous parties submitted comments in response to the proposal, many suggesting that counting distributed energy (DE) or distributed generation (DG) kWhs to establish compliance without acquiring the RECs would devalue the customers' RECs and constitute a taking of their property without compensation. On November 15, 2012, the Center for Resource Solutions (CRS) submitted a letter to the Docket (Docketed on November 16, 2012) explaining the problem:

> Enabling utilities to use kWh from customer DG facilities instead of RECs for REST purposes would effectively destroy the market for voluntary RECs from DG in Arizona, and may prevent such RECs access to other RPS markets as well. The Arizona voluntary REC market is thriving, in large part because the owners of DG facilities are able to claim the RECs produced from the renewable energy and sell them in either the voluntary or the compliance market. In 2010, Arizona had approximately 3,200 residential customers and 80 non-residential customers purchase renewable energy in the voluntary market, and Arizona renewable generators generated nearly 28,000 MWh that were sold into the voluntary REC market.

CRS further noted that:

> Under the track and record approach kWh from the renewable DG facility are effectively credited to the utility company for REST compliance. Use of the renewable kWh to meet or determine a compliance obligation renders

> the DG customer's REC effectively taken and used by the utility. Unless the utility purchased or otherwise contractually received the REC, the utility would be double counting the REC that rightfully belongs to the DG owner, resulting in the DG owner being unable to sell their REC into the voluntary market or, potentially, other states' RPS markets.

CRS stated that a proposal similar to Track and Record was adopted in Hawaii with devastating effects on the voluntary market for DG RECs. Instead, CRS encouraged the Commission to reject the Track and Record approach to REST compliance and to pursue alternative market mechanisms that would enable utilities to purchase and aggregate RECs from DG to count towards REST compliance. Such market solutions could include a standard offer to DG customers for their RECs or using REC brokers to help aggregate DG RECs for sale to utilities.

Because of the questions raised about the track and record proposal, this proceeding was established to consider not only Track and Record but other alternative options.

V. CRITERIA FOR EVALUATION

Staff proposed five important considerations for evaluation of the proposals. They are as follows:

1. Provide a clear and easily documented way for utilities to achieve compliance under the REST rules;
2. Recognize reality regarding how much electric load is actually being met with renewable energy;
3. Minimize the cost to ratepayers;
4. Maximize value to the extent possible for those who undertake DE installations and Arizona as a whole; and
5. Be minimally invasive to the REST rules.

WRA/Vote Solar do not disagree with Staff's identification of considerations but would add flexibility as an important consideration as well. As noted earlier, any solution that locks the Commission into a fixed path for the indefinite future is unwise given the changing circumstances surrounding the deployment of distributed energy. Any proposal adopted by the Commission should provide enough flexibility to adapt to those changing circumstances.

In summary, WRA/Vote Solar support proposals that are flexible, preserve the integrity of RECs, maintain the REST rules and promote compliance with them. There are several proposals that satisfy these criteria in some measure and several that have fatal flaws.

VI. PRESERVING THE INTEGRITY OF RECs

A. The Double Counting Issue

Because the issue of double counting RECs is what triggered this proceeding, it is important to understand the concept of double counting RECs and why double counting should be avoided in any proposal adopted by the Commission.

The Center for Resource Solutions has established the Green-e Energy National Standard for Renewable Electricity Products. The standard is intended to protect buyers of RECs by mandating accountability on retail products sold to consumers. Double counting is not permitted under the Green-e National Standard.

CRS does not set state renewable energy policies. Rather, CRS certifies that RECs represent the attributes of renewable energy production so that buyers of the RECs can be assured that they are getting what they are paying for. This includes assurance that the RECs are associated with eligible renewable resources (such as solar energy) and that the RECs have not been claimed by another party.

CRS's National Standard (Green-e Energy National Standard Version 2.3, April 23, 2013) "defines standards for renewable electricity and renewable energy certificates (RECs) sold in Green-e Energy certified sales, in order to help promote high quality renewable electricity development and generation, and the environmental benefits of such generation in place of traditional fuels used for electricity" (p. 2). Among its objectives (http://green-e.org/about_miss.shtml) are:

- Bolstering customer confidence in the reliability of retail electricity products reflecting renewable energy generation.
- Providing customers clear information about retail clean energy products to enable them to make informed purchasing decisions.

CRS also states that its verification process gives customers confidence in their choice of renewable energy options and suppliers and that many large customers (Commercial & Industrial, federal, state and local governments) require Green-e certification in their solicitations (http://green-e.org/getcert_re_why.shtml).

CRS's website (http://green-e.org/getcert_re.shtml) further describes CRS's activities as follows: "When you see our logo and buy renewable energy that is Green-e Energy Certified, you know that:

- You are supporting new renewable resources: The windmill, solar panel or other generator that produced your renewable energy was built since 1997.
- There has been no double selling: You are the only one that can claim the benefits of the renewable energy you bought; these benefits include the fact that renewable energy produces little or no greenhouse gas emissions.
- Your purchase goes beyond business as usual: You are buying renewable energy beyond what is required by law or claimed against a mandate, and are helping expand the production of renewable energy in the U.S. and Canada."

In conclusion, the Commission sets utility policy in Arizona, but in setting a policy the Commission should be cognizant of the consequences of that policy. If the Commission adopted Staff's Track & Monitor approach, the result would be a devaluation of customers' RECs as explained in this brief.

B. Property Rights in RECs.

Tucson Electric Power Company and UNS Electric, Inc. maintain that any value of RECs to the Affected Utilities is the result of a legal fiction created under the Renewable Energy Standard and that renewable energy credits are a means of tracking compliance (TEP & UNS rebuttal p. 5, lines 13-18). TEP and UNS misrepresent the role of RECs. First, renewable energy comes with environmental and other attributes. Property rights in these attributes are separable from the rights to electric energy (kWh) generated by renewable resources and are traded in REC markets. "Unbundling" of attributes from an underlying good or service is not unique to renewable energy. For instance, development rights can be unbundled from land. Separable development rights underlie such practices as public purchase of development rights to preserve open space, acquisition of development rights by land trusts to preserve open space, and use of transferable development rights to preserve open space.

Second, RECs associated with Arizona distributed renewable energy projects (and central station renewable energy projects) would exist even if there were not a Renewable Energy Standard in Arizona. Those RECs could be purchased by parties other than Arizona utilities through voluntary REC markets or retained by their owners to demonstrate that they are meeting their own clean energy goals.

Third, A.A.C. R14-2-1803C indicates that a Renewable Energy Credit is owned by the owner of the Eligible Renewable Energy Resource from which it was derived unless specifically transferred. Thus, a REC owner has rights associated with RECs. The

U.S. Environmental Protection Agency ("EPA") states that a REC "represents the property rights to the environmental, social, and other nonpower qualities of renewable electricity generation. A REC, and its associated attributes and benefits, can be sold separately from the underlying physical electricity associated with a renewable-based generation source." (http://www.epa.gov/greenpower/gpmarket/rec.htm).

More generally, "Property rights delineate ownership of tradable credits and enable the legally recognized transfer of control of the credits. Without a clear assignment of rights to tradable credits, the regulator and the utility required to meet the portfolio standard could not be sure that the portfolio standard was being met. Additionally, without a clear assignment of rights, owners of renewable generation equipment could not be sure of their ability to capture the revenues from the production of eligible energy for which they have incurred the costs." (David Berry, "The Market for Tradable Renewable Energy Credits," *Ecological Economics*, vol. 42, no. 3, September 2002: p. 372). Further, buyers of RECs could not be sure that they aren't being swindled if property rights are not clearly defined and enforceable.

Thus, RECs are not a fiction. They are real and exist whether or not TEP & UNS track them or acquire them. Further, property rights in RECs are addressed by the Commission's Renewable Energy Standard (A.A.C. R14-2-1803).

VII. EVALUATING THE PROPOSALS

A. WRA's Proposal

WRA believes that if utilities need RECs to comply with the distributed renewable energy requirements, utilities should purchase the RECs. This is straightforward, provides incentives to customers if incentives are needed, could be used only when utilities need RECs, and does not require a change in the REST rule. No double counting

problem occurs and the ability of the Commission to apply incentives when necessary to increase adoption of distributed renewable energy is preserved.

WRA proposed two alternatives for acquiring RECs:

1. Use an auction process to obtain RECs from distributed renewable energy projects to comply with the current distributed renewable energy requirement if additional RECs are needed, or
2. Conduct a technical conference to obtain reliable information on the effect on the rate of adoption of distributed renewable energy of eliminating incentives, changing net metering practices, or changing rate designs for electric service. If the technical conference indicates that incentives are still needed because, for example, the Commission modifies net metering practices, utilities could continue to obtain RECs for distributed resources by employing the methods they previously used or by using an auction if additional RECs are needed.

The specifics of an auction or similar approach, including the terms of REC purchases, should be developed through a collaborative process among Staff, utilities, and stakeholders so that the auction is workable, fair, effective, and consistent with the Renewable Energy Standard. The utilities, Staff, and stakeholders should provide the Commission with their recommendations within six months of the effective date of the decision in this matter. A well-designed auction process will reveal the level of incentives needed to attract investment in distributed resources, including situations in which the net metering rule is modified (or expected to be modified) and rate design changes are adopted. If incentives are not needed, the market price for RECs should be very low in all Arizona market segments (PV, solar hot water, other technologies, and residential, commercial, government, and school sectors).

It is appropriate for the Commission to waive the distributed renewable energy requirement until an auction method is adopted or the results from the technical conference are reviewed by the Commission and the Commission takes action on the matter.

Staff raised the issue of the Commission's control over the level of incentives if an auction process were used. The Commission could establish an annual budget in its regular review of implementation plans, based upon information provided by stakeholders, proposed budgets developed by the utilities, and prior years' experience with REC prices. Further, the Commission could require utilities to set a maximum REC price or "standard offer." If a technical conference approach is adopted to determine whether incentives would be needed and if incentives are needed, they could be set administratively or via an auction as just described.

Staff also raised the issue of whether sellers of RECs in an auction process would be able to manipulate the market and force up REC prices. The Commission could take several steps to eliminate the effects of market power. First, results of any auctions should be made public, audited by or for Staff, and reviewed by the Commission. Second, a reasonable maximum bid price or maximum incentive ("standard offer') could counter sellers' ability inflate REC prices.

B. Vote Solar Proposal

Vote Solar proposed an administratively simple and low-cost market-based standard offer method for continued acquisition of RECs if and when incentives are trimmed to zero. This method, however small the successful payment offer, avoids double-counting and maintains the integrity of the REST.

Utilities and load-serving entities across the country have actively conducted market-based solicitations to obtain RECs for compliance with state-based renewable

policies. Additionally, Arizona utilities have used a similar approach in soliciting non-residential solar projects, as well, based on the uniform credit purchase program or UCPP. The UCPP was developed in 2006 by a broad range of stakeholders representing utilities (including the cooperatives), renewable industries, cities and state government. APS for example, would solicit for a certain number of RECs at a certain price, but allow bidders to offer RECs at a lower price. These cheaper RECs would be purchased first. A similar structure can be established here, if and when it becomes necessary.

Vote Solar suggested an initial *quarterly* offer to purchase a limited number of RECs to test market values, while encouraging REC owners to offer RECs at a price lower than the standard offer. Such lower priced RECs, if offered would be acquired first in order of cost. Over time, the offers and timing can be refined. The Standard Offer should be open to system owners and third party aggregators who acquire RECs and/or bid them on customers' behalf.

This procurement method is consistent with Arizona law and Commission rules and does not require special consideration, creative work-arounds, obfuscating semantics, rule modifications or on-going waivers. Indeed, it is similar to the method used by the IOUs to acquire commercial solar RECs in the early days of the standard. It uses the market to assure that residential RECs are acquired at the lowest cost while respecting the property rights of solar system owners. Third, it avoids unnecessary complexity and administrative or regulatory burdens and uses a mechanism with which the utilities have experience.

Finally, it puts Arizona in a leadership position on valuing and acquiring RECs so that as other state markets reach a similar point in their evolution, the Arizona model can be replicated elsewhere.

Any administrative preparation that is required can occur prior to the elimination of incentives. However, Vote Solar does not oppose a limited waiver of the residential portion of Section 1805 for up to one year.

C. RUCO Baseline Proposal

RUCO proposed a new approach to RECs in its surrebuttal -- the "baseline" concept. While RUCO's proposal is rather general, the concept should be considered by the Commission.

The baseline concept is as follows. In its annual review of utility implementation plans, the Commission would establish a baseline amount of distributed renewable energy generation capacity (MW) that represents an acceptable level of, or acceptable growth rate of, distributed renewable energy in lieu of the distributed renewable energy requirements in the Renewable Energy Standard. The Commission would obtain information from utilities and interested parties on the particular level of the baseline each year when reviewing utility implementation plans for the next year. For example, the baseline might be an increase of 100 MW of distributed renewable energy projects from a previous year.

If the amount of distributed generation in a utility's service area meets or exceeds the baseline amount in the year prior to the implementation plan year, the utility's distributed renewable energy requirement would be waived for the next year. If the level of distributed generation in a utility's service area does not meet the baseline, the Commission would require the utility to engage in an auction or otherwise purchase sufficient RECs in the next year to comply with the distributed renewable energy goal in the Renewable Energy Standard.

A crucial element of the baseline proposal is setting the baseline in a manner that does not result in double counting, i.e., that does not create a potential for multiple claims

to the same RECs and that does not devalue a customer's RECs. Parties participating in the Commission's review of an implementation plan should provide support for their opinion on whether double counting of RECs could occur.

It is appropriate for the Commission to waive the distributed renewable energy requirement until the baseline method is approved in its review of the 2015 renewable energy standard implementation plans which would be filed in 2014.

Finally, the Commission should hold all utilities to the total renewable energy requirements contained in A.A.C. R14-2-1804, regardless of whether the distributed requirement is waived.

D. Staff's Modified Baseline Proposal

Staff was concerned that under RUCO's baseline proposal, the Commission would not have a direct linkage between the amount renewable energy deployed in Arizona and compliance with RES requirements. Volume 4 at 692. As Staff witness Gray stated:

> Simply put, the numbers do not add up as they do under the current RES rules or Staff's track and monitor proposal. So RUCO's proposal would not fully meet Staff's goal number 2...

Transcript, Volume IV at 692-3.

As Mr. Gray further explained, RUCO's revision might be problematic in regard to how it relates to the annual cycle for Commission consideration of RES plans. Therefore, Staff determined that if the Commission were to decide to move toward a variation of the track and monitor proposal that did not have a direct link to actual renewable energy production, "Staff would prefer to simply have the full DE piece for a given year be waived and then the Commission would determine each following year if another waiver should be granted or other action taken." Volume IV at 693.

Explained another way, Staff believes its modification of RUCO's baseline proposal is a "simpler way to get to basically the same point." Volume IV at 699. Once

there is no direct tie to the 15% RES level or some lower level where the numbers all add up, Staff testified that a waiver makes more sense than the more complicated process that RUCO put forth "recognizing that they are...in the same ball park as proposals." Volume IV at 700. Staff recognized that there are changing circumstances that will affect customers' installation of distributed generation. That is why Staff was uncomfortable with a permanent elimination of that carve out. However, Staff believed that it can get to a similar result with the year – to – year waiver "but giving the Commission more flexibility to react as things change in the market." Volume IV at 701. Staff believes that the mechanism should be sufficiently flexible to react to changing circumstances. *Id.*

Staff testified that it believes this modified version of RUCO's baseline proposal is a viable option for the Commission to consider if the Commission decides not to adopt Staff's track and monitor proposal. It would not require any change to the REST rules and it avoids any potential for double counting. Volume IV at 722.

E. Staff's Track and Monitor Proposal

Under Staff's Track and Monitor method, the Renewable Energy Standard requirement would be reduced for each utility on a kWh per kWh basis for all distributed energy that is produced in its service territory where no REC transfer to the utility takes place. Staff provides numerical examples in Exhibit RGG-2. All customers' distributed energy production would be metered and that energy would either fall into: (1) the category where the utility receives the RECs, or (2) the category of production facilities where no incentive is taken and no RECs are transferred to the utility. Production from category 1 would count toward meeting the utility's Renewable Energy Standard compliance requirement, and production from category 2 would reduce the utility's Renewable Energy Standard requirement.

This method creates a double counting predicament for REC owners. According to the Green-e Energy National Standard for Renewable Electricity Products, "Eligible RECs or renewable energy can be used once and only once ... Renewable energy or RECs (or the renewable or environmental attributes incorporated in that REC) that can be legitimately claimed by another party may NOT be used in Green-e Energy Certified REC products."[2]

In particular, energy (kWh) produced from eligible renewable resources for which the RECs are not transferred to the utility would be used to reduce the renewable energy requirement under the Track and Monitor method. Thus, the RECs associated with these kWh are implicitly counted to adjust the regulatory requirement. Consequently, those RECs cannot also be used by the customer to meet his or her own renewable energy goals nor can they be sold by the customer to another party because the RECs would be double counted. As a result, in the case where the utility counts renewable kWh from distributed resources to adjust the renewable energy requirement without actually obtaining the RECs, Staff's proposal devalues a customer's RECs without compensation to the customer. One REC cannot serve two purposes. Therefore, Staff's Track and Monitor approach should be rejected.

F. RUCO's 50/50 Proposal

The Commission should reject RUCO's 50/50 split proposal because there are too many unanswered questions and too many inappropriate assumptions.

The proposal cannot accurately be called a "compromise" as depicted by RUCO unless the affected parties agree to it. A "compromise" cannot be imposed on customers by the Commission or the utilities. In this case, RECs are initially owned by the owners

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[2] Center for Resource Solutions, *Green-e Energy, National Standard Version 2.3*, p. 9.

of the distributed renewable energy systems. RUCO's proposal requires customers to hand over some of their property (RECs) to a utility without compensation from the utility in order to obtain electric service. Why should customers agree to hand over half their RECs to the utility in return for getting interconnection service they are otherwise currently entitled to as utility customers? How would the utilities know whether the customers have affirmatively agreed to transfer half their RECs and thus be able to count the RECs? How could a customer be prevented from seeking compensation from the utility for the utility's claiming ownership of the customer's RECs?

An additional concern is what the utility is going to do with only half the RECs. Would the utility have to try to get customers to install twice as much distributed renewable energy as they otherwise would in order to obtain sufficient RECs to meet regulatory requirements? How would they do this without paying for the RECs?

Finally, RUCO revealed during the hearing that in order to incent customers to give half their RECs to the utility (for no compensation) under the 50/50 split proposal, a "stick" is necessary such as the utility charging a fee for not turning over the RECs. This kind of punitive approach applied to customers is poor public policy, distorts the purpose of incentives to encourage distributed renewable energy generation, and would be extremely difficult for the Commission to justify to the public.

G. The Utilities' Proposal

The utilities' main proposal is to eliminate the distributed generation carve-out and thereby eliminate the need to acquire distributed energy RECs. APS proposed that the REST total requirement (A.A.C. R14-2-1804) would be unchanged. As indicated above, elimination of the distributed generation carve-out in A.A.C. R14-2-1805 is premature because incentives may be needed in the future to accelerate early adoption of distributed resources if net metering rules change, if rate structures are changed, or for other reasons.

These types of changes are proposed in APS's net metering application. The utilities' proposals should be rejected. WRA and Vote Solar also support retention of the current standard in A.A.C. R14-2-1804.

VIII. CONCLUSIONS

The threshold question in this matter is whether anything needs to be done to achieve compliance with the distributed generation portion of the Renewable Energy Standard if incentives are no longer needed. One avenue available to the Commission is to do nothing in this docket and simply authorize utilities to purchase RECs from distributed resources as needed in its review of implementation plans. If incentives are rarely needed, the REC price will be minimal.

WRA and Vote Solar recommend that either: (a) the Commission adopt an auction proposal with the option of the Commission capping the price, or (b) the Commission require utilities to employ a standard offer to purchase RECs that is regularly revised and updated. The auction process or standard offer mechanism would be reviewed each year when the Commission considers the REST implementation plans. No fundamental change to current practice is needed. Under either the auction or standard offer approach, the utilities would seek to acquire at least the volume of RECs necessary to meet the REST requirements each year. If no RECs are needed, no acquisition is required. If incentives are occasionally needed to attract investments in distributed solar energy, REC prices will be very low. Both WRA's and Vote Solar's proposals maintain the existing rule, require no regulatory contortions to meet the distributed generation requirement, do not double count RECs, provide flexibility to alter incentives as market conditions change (e.g., if net metering practices are changed or rates are redesigned), and are simple and practical. The utilities can also report kWh of distributed energy as required by A.A.C. R14-2-1812(B)(1) and (2).

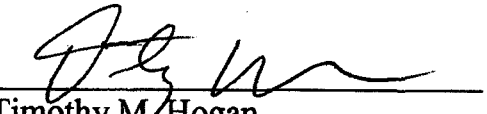
The RUCO baseline proposal may be an acceptable solution but setting the baseline could be a difficult process.

Staff's modification to the RUCO baseline proposal which would allow the Commission to annually evaluate the need for incentives and implement waivers as appropriate may also be a potential solution. It preserves flexibility for the Commission and does not require any change to the rules.

The utilities' proposal to eliminate the distributed generation requirement, the Staff Track and Monitor proposal, the original Track and Record proposal, and RUCO's 50/50 split proposal should all be rejected. Elimination of the distributed generation requirement reduces the Commission's flexibility and is premature as there is no reason to believe that incentives will never be needed again, especially in light of APS's net metering proposal. The Track and Monitor and Track and Record proposals result in double counting of RECs. The 50/50 split proposal is unworkable.

DATED this 27th day of August, 2013.

ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST

By 

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Arizona Corporation Commission
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OFFICE OF
AIR AND RADIATION

Mr. Bob Stump
Chairman
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Subject: Using "Track and Record" for compliance with the distributed generation portion of the Arizona Renewable Energy Standard (Docket Nos. E-01345A-10-0394 et al.)

Dear Chairman Stump:

The U.S. Environmental Protection Agency (EPA) is writing to express concern with the proposed shift to a Track and Record method for utilities to demonstrate compliance with the distributed generation (DG) portion of the state's Renewable Energy Standard and Tariff (REST) instead of the current practice of procuring and retiring Renewable Energy Certificates (RECs).

EPA supports the development of clean, renewable energy resources for electric power generation through the national voluntary program – the Green Power Partnership – which recruits commercial, institutional and governmental organizations to increase their use of renewable electricity. Currently, EPA partners with over 1,400 organizations that purchase or self-generate more than 27 billion kWh of green power annually. These renewable electricity purchases were equal to 0.6% of U.S. electricity sales in 2011 and are above-and-beyond regulatory requirements.

Track and Record, as proposed, would open the door to double-counting the voluntary purchases and the self-generation of renewable electricity from Arizona DG systems that may be in excess of state mandates by allowing utilities to tally the same renewable electricity generation toward meeting their REST requirements. To protect its Partners' ability to make environmental claims, the Green Power Partnership would have to revise programmatic eligibility standards to exclude renewable electricity generated from DG systems in Arizona. This could negatively impact those Green Power Partners operating in Arizona and any out-of-state Partners currently procuring RECs from Arizona. EPA would rather not take this step, as it would narrow the options available to our Partners. It is in the interest of avoiding that possibility that we provide our comments on this issue.

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DOCKET CONTROL

Western Resource Advocates ("WRA") and The Vote Solar Initiative ("Vote Solar") submit the following Reply brief. This brief addresses several issues including some parties' misunderstanding of RECs and REC markets, the acquisition of RECs, the double counting problem, and the distributed generation (DG) carve out.

A. Misunderstanding of RECs and REC Markets

Some of the positions taken by parties to this docket reflect a fundamental misunderstanding of the role of RECs and of how REC prices are determined. Principles of RECs and REC markets were summarized in WRA/Vote Solar's opening brief. However, several misunderstandings persist as explained below.

APS states (Closing Brief, p. 4, starting on line 15) that no market exists into which Arizona DG REC owners could sell their RECs. Witnesses Huber and Martin, cited by APS, actually said that they did not know how many Arizona distributed generation RECs were sold. CRS further described the volume of activity in the voluntary market: "In 2011, Green-e Energy verification found that Arizona had 2,986 residential customers and 146 non-residential customers purchase renewable energy in the voluntary market, and Arizona renewable generators generated 29,997 MWh that were sold into the voluntary REC market to customers inside and outside of the state." (Jennifer Martin, Direct Testimony, unnumbered p. 7). Up until recently, nearly all DG RECs in Arizona have been purchased by utilities through their DG incentives. If incentives are no longer needed or allowed, and the Commission does not authorize a track and monitor type of policy which creates a double counting issue, then the future volume of Arizona DG RECs sold in the voluntary market may increase as the compliance market evaporates.

APS further states (Closing Brief, p. 4, line 18) that "Without a change to the REST rules, it is not clear if an owner of RECs can sell them to anyone other than a

utility as RECs are defined under Arizona law." This statement is untrue. RECs exist even if the Commission had no REST (Berry surrebuttal, p. 4 starting at line 33). The Commission does not regulate customers or what customers do with their property. Arizonans buy and sell RECs as noted above and Arizona customers can and do retain their RECs to meet their own clean energy goals (see, for example, the U.S. Department of Defense and All Other Federal Executive Agencies' Brief, pp. 2-3) .

APS indicates (Closing Brief, p. 5, starting on line 6) that rules created by a California non-profit should not determine Arizona's energy policy. CRS is not determining Arizona energy policy – it assures buyers of RECs that they are getting what they are paying for. The Commission should understand the consequences of its policies: the ability or inability of customers to sell or use their RECs is an important consequence of the choices presented in this docket. Further, the fact that CRS is located in California is immaterial. CRS's policies encompass North America. APS does not ignore national reliability standards even though an out of state entity (the North American Electric Reliability Corporation) develops these standards.

TEP and UNS attempt to obfuscate the nature of RECs by implying that the RECs needed to comply with the REST are somehow different than the RECs traded in voluntary markets, apparently because some RECs allegedly do not include environmental attributes (Initial Post-Hearing Brief, pp. 10, 12-14). In actuality, RECs represent environmental attributes for Arizona REST compliance purposes and for other purposes.

A.A.C. R14-2-1804 E states that "If an Affected Utility trades or sells environmental pollution reduction credits or any other environmental attributes associated with kWh produced by an Eligible Renewable Energy Resource, the Affected Utility may not apply Renewable Energy Credits derived from that same kWh to satisfy

the requirements of these rules." This means that the RECs used to satisfy the REST requirements must include the environmental attributes.

TEP's 2013 Up-Front Incentive Renewable Energy Credit Purchase Agreement (Leased Residential Grid-Tied Solar PV), Section 1.8, defines RECs as follows:

> *"REC" means any and all environmental credits, attributes and benefits, including greenhouse gas or emissions reductions and any associated credits, environmental air quality credits, offsets, allowances and benefits howsoever entitled, actual SO_2, NOx, CO_2, CO, Carbon, VOC, mercury, and other emissions avoided, credits towards achieving local, national or international renewable portfolio standards, green tags, and any and all other green energy or other environmental benefits associated with the generation of renewable energy (regardless of how any present or future law or regulation attributes or allocates such characteristics), including those created under the REST.*

In its business dealings, TEP does not exhibit the confusion it seeks to create in this docket. TEP's definition of a REC does not distinguish between compliance markets and voluntary markets – it applies to both. The definition also recognizes that the RECs represent non-kWh features of renewable energy.

More generally, EPA states that a REC "represents the property rights to the environmental, social, and other nonpower qualities of renewable electricity generation. A REC, and its associated attributes and benefits, can be sold separately from the underlying physical electricity associated with a renewable-based generation source." (http://www.epa.gov/greenpower/gpmarket/rec.htm).

Further, despite TEP's assertion otherwise (TEP/UNS Initial Post-Hearing Brief, starting on page 16), customers clearly have property rights associated with RECs (Berry surrebuttal, p. 4 starting on line 24). The rights include the ability to legitimately claim the environmental attributes listed by TEP. It is those rights that are transferred in REC

markets (WRA/Vote Solar Opening Brief, starting on p. 10), including TEP's acquisition of RECs through its credit purchase agreements.

B. Acquisition of RECs.

APS, TEP, and Staff criticize WRA and Vote Solar for proposing an auction method or standard offer[1] method to acquire RECs (TEP Initial Post-Hearing Brief, starting on p. 23; Staff Opening Brief, p. 11, APS Closing Brief, p. 6). Their briefs indicate that an auction or standard offer present administrative difficulties, have uncertain costs, or cost ratepayers too much. These criticisms are unfounded or distort what is actually happening.

While we agree that utilities should seek to obtain resources at the best price for ratepayers, Staff's Track and Monitor approach and the original Track and Record approach both try to get something for nothing by meeting the distributed generation requirement or reducing the distributed generation requirement by claiming RECs for regulatory purposes that utilities have not purchased. These proposals devalue RECs owned by customers or others as discussed in the section on double counting.

To obtain RECs at the lowest price supported by the market, WRA and Vote Solar have recommended either an auction approach or a standard offer. Both approaches are quite workable as they continue existing practices. Staff's concerns about a vague process (Staff Opening Brief, p. 11) are easily addressed. The Commission has used a standard offer approach for years by setting an incentive rate for the acquisition of RECs and Staff has reviewed utility incentive proposals. Indeed, Staff has recommended incentive levels many times and has experience with dynamic REC market conditions.

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[1] Note that Vote Solar's Standard Offer proposal encourages participants to offer RECs at a price lower than the standard offer, in which case the lowest price RECs would be acquired first. See Gilliam Direct Testimony, page 15.

Moreover, APS has used an auction approach for performance based incentives so there is a track record of successful implementation. This is not a voyage into outer space – it's a well understood journey over familiar territory.

If a utility needs additional RECs to comply with the REST, an auction or standard offer approach to purchasing RECs will reflect the level of incentive needed. If incentives are not needed, REC prices will approach zero so there is little impact on ratepayers when utilities acquire the RECs they need to comply with the distributed generation requirement under these circumstances.

To alleviate concerns over market power or uncertain budgets for REC acquisition, the Commission could cap the REC price paid by utilities and set a budget annually for each utility during its review of REST implementation plans. (Berry surrebuttal p.3, starting on line 1; WRA/Vote Solar Opening Brief, p. 13). Staff, the solar industry, and other stakeholders can continue to provide advice to the Commission on setting a standard offer or developing an auction.

TEP/UNS (Initial Post-Hearing Brief, p. 25) criticizes WRA for recommending that the utilities, Staff, and stakeholders work together to develop an auction approach on the grounds that such collaboration would be cumbersome. APS held such a "technical conference" when it devised its performance based incentives several years ago. The discussion was useful and took only a few hours.[2] All the parties would benefit from a collaborative design for an auction or standard offer. Doing so need not be burdensome as experience with APS has demonstrated. But not undertaking a collaborative approach could result in protracted reviews of utilities' individual implementation plans with regard to how the standard offer should be set or how an auction should be conducted.

[2] Staff also conducted a series of workshops on developing the uniform credit purchase programs as indicated in WRA/Vote Solar's opening brief, p. 14, starting on line 1.

C. Double Counting

Staff (Opening Brief, p. 8, starting on line 16), TEP (Initial Post-Hearing Brief, starting on page 9, line 4, and APS (Closing Brief starting on page 4, line 9) argue that Staff's Track and Monitor approach does not double count RECs. We disagree for the reasons set forth in our opening brief (starting on p. 17, line 15; also Berry rebuttal, starting on p. 2, line 32 to p. 3, line 10). Adjusting the distributed generation requirement downward as proposed in the Track and Monitor approach constitutes a claim on RECs without the utilities actually acquiring the RECs from the REC owners. This situation leaves the REC owner (e.g., a customer with a rooftop solar energy system) in a position where he or she could not legitimately sell the RECs in the voluntary market nor use the RECs to meet his or her own renewable energy goals. Thus, the Track and Monitor approach is unsuitable as a Commission policy because it creates a double counting dilemma.

Moreover, TEP and APS have been careful in their acquisition of RECs to be sure that the RECs they have acquired are not also claimed by another party (Berry Direct Testimony, p. 7, starting on line 2). Thus, TEP and APS are sufficiently concerned about double counting that they address the issue explicitly in their credit purchase agreements. Double counting is a real issue to the utilities and it should be a real issue to the Commission.

D. The DG Carve out

WRA and Vote Solar agree with Staff that the DG carve-out should be retained. We disagree with TEP/UNS's recommendation that the DG carve-out be eliminated (TEP Initial Post-Hearing Brief, pp. 26, 30).

The fact that incentives are close to zero today is not sufficient reason to abandon the DG carve out as the Commission may alter net metering practices and change rate

designs, both of which could make distributed solar energy economically unattractive in the absence of incentives (Berry, direct testimony, p. 7, starting on line 35). The Commission may wish to direct utilities to offer incentives for distributed generation in the future.

CONCLUSIONS

Several approaches have been recommended by the parties on how to meet the REST distributed generation requirements in the absence of incentives. The Track and Monitor approach proposed by Staff and supported by APS and TEP/UNS attempts to create a system in which utilities do not pay for RECs but still claim the RECs for the purpose of adjusting the distributed generation requirement downward. Thus, Track and Monitor (and similar approaches) creates a double-counting catch-22 that devalues RECs.

WRA and Vote Solar have proposed that the utilities continue to acquire RECs as needed to meet the distributed generation requirement. The acquisition process should be designed to obtain the lowest cost for ratepayers and we support either an auction or regularly updated standard offer to accomplish this. If incentives are rarely needed, REC prices will be close to zero and have minimal impact on ratepayers. The Commission can oversee the auction/standard offer approach by setting annual budgets and a cap on REC prices as it sees fit. WRA's and Vote Solar's recommendations do not create a double counting problem. Moreover, the auction and standard offer approaches are continuations of existing practices, not untested ideas.

Lastly, Staff and other parties have recommended, often as a second choice, annual consideration of a waiver of the distributed generation requirement by the Commission. An occasional waiver may be warranted, but it should not become a regular occurrence. The Commission has a Renewable Energy Standard and it ought to be implemented. The best way to implement the REST is for utilities to legitimately

acquire RECs from customers, when the utilities need the RECs, and to do so using a method that minimizes costs for ratepayers. That method is an auction or standard offer.

DATED this 12th day of September, 2013.

ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST

By _____

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ORIGINAL and 13 COPIES of the foregoing filed this 12th day of September, 2013 with:

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All Parties of Record

_____

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Bob Stump, Chairman
Gary Pierce
Brenda Burns
Bob Burns
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ORIGINAL

PROPOSED RULEMAKING TO MODIFY THE RENEWABLE ENERGY STANDARD RULES IN ACCORDANCE WITH ACC DECISION NO. 74365.	**DOCKET NO. RE-00000C-14-0112** **COMMENTS OF THE CENTER FOR RESOURCE SOLUTIONS ON STAFF'S PROPOSED OPTIONS**

The Center for Resource Solutions (CRS) appreciates the opportunity to provide information to the Arizona Corporation Commission (Commission) as it considers the issues brought forward in this proceeding. CRS is a nonprofit organization, and, as such, has limited resources and is not able to devote the resources necessary to become a party to this proceeding. The issues being considered in this proceeding are important to the future of renewable energy in Arizona, and CRS is appreciative of the opportunity to be able to share its perspectives through the public comment process.

The Utilities Division Staff (Staff) have provided a compliance filing per Decision No. 74365 that briefly describes seven options to modify the Renewable Energy Standard Tariff (REST). Below, CRS provides comments on these options as well as on the Recommended Opinion and Order

Recommended Opinion and Order

CRS could support the original Recommended Opinion and Order's (ROO) recommendation of a temporary waiver in the case that the Commission articulates in more detail proposed criteria governing such a waiver. As it is currently presented, the process that the Commission will use to determine whether a requested waiver is in the public interest and does not result in increased risk of double counting renewable energy generation or attributes (RECs) is not sufficiently clear for CRS to comment on potential double counting risks. Staff's proposed criteria, which was praised by the Administrative Law Judge in the ROO, is problematic as it included the proposal: "recognizing the reality regarding how much electric load is actually being met with renewable energy" and doing so by looking at the kWh generated from all DE facilities, *regardless* of REC ownership. Unless other criteria are proposed, or other methods of demonstrating this criterion are adopted, implementation of the Staff's Alternative Track and Monitor proposal could result in double counting and/or effectively taking, without compensation, the value of RECs retained by DG system owners. In general, measuring of supply and

generation does not create double counting/claims problems for renewable energy use claims (which require REC ownership). Issues arise when counting of renewable energy supply/generation is equated with renewable electricity use, such as serving "electric load" without RECs also being required to substantiate the use of renewable energy.

Staff's Proposed Options

I. Track and Monitor

CRS strongly urges the commission not to accept Track and Monitor. This option devalues the REST and private voluntary actions. Counting generation as if it were providing renewable energy to load (and thereby reducing the REST) clearly signals that the benefits of that renewable energy generation, including the value of the RECs, are being counted for REST purposes. This would significantly impact the value of the affected RECs for use or sale within and outside the state and reduce the attractiveness of investment from the private sector in Arizona renewables. Such a proposal changes the REST from a minimum level of renewable energy activity in the state to a cap, effectively eliminating the ability for individuals and the private sector to "make a difference" in the amount of renewable energy in the state.

The voluntary market exists as a way for people and organizations to make purchases that are above and beyond what is required by law/used for REST compliance purposes. If the REC is claimed by the REST compliance market then it has no value in the voluntary market thereby reducing the incentive for private investment in solar generation in Arizona.

II. Process Where Utility Would Purchase Least Cost RECs or kWh

CRS strongly supports this option, so long as it is made clear that renewable kWh are those kWh that still have the REC associated with it. It should also be clear that the least cost REC will still need to meet the REST eligibility requirements, including, but not limited to, resource type, location and size.

III. Creation of Maximum Conventional Energy Requirement

CRS does not support this option due to the complexity, administrative burden, and the ease of gaming. It would be very difficult to achieve the goals of the REST with this option. If this option is selected, electricity generation from renewable energy facilities (kWhs) that does not have RECs associated with it should not be considered "non-conventional" as the renewable attributes are contained within the REC and belong to the REC owner. Such kWh are called "null power" and best practices in electricity generation tracking are that such electricity be considered to have attributes equal to the profile of average system energy (e.g, NERC region or state).

IV. Mandatory Upfront Incentives ("UFI")

CRS supports the option of Mandatory Upfront Incentives, if the provision that the UFI mandate and/or DG/DE mandate can be waived if it is determined that there is sufficient DG being installed is deleted. This provision as it stands raises the same risks as the prior Track and Monitor proposal.

V. REC Transfer Associated with Net Metering

While using net metering tariffs as a procurement mechanism for RECs is a proposal to consider, net metering customers should be given a choice of whether or not to relinquish their RECs. The RECs should not be taken in exchange for the service that the utility is already required to provide without compensation and agreement by the REC owner. Net metering customers should be paid full value for their RECs if they voluntarily decide to transfer them to the utility through the net metering tariff. A policy wherein all net metering customers are required to transfer their RECs to utilities would reduce private investment into DG/DE in Arizona, as those RECs would not be usable by the installation owner, the homeowner/system host, or any third party.

VI. Recovery of DG/DE Costs Through the Standard Rate Case Process

A waiver of the DG/DE requirement based on sufficient DG being installed in the Utilities service area has the same risks as track and monitor and any other proposal that equates generation with REST compliance.

VII. Track and Record

CRS strongly urges the commission to reject Track and Record. The option would likely constitute a claim on all Arizona privately-owned RECs, even though it purports not to. The option inaccurately states that the null kWh is being reported for informational purposes only, however the in-state generation is the only type of information specifically referenced for the Commission to rely on. This information is clearly being used to determine compliance.

CRS appreciates the Staff's desire to preserve REC values for Arizona citizens and organizations who have invested in DE. However, any use of renewable energy generation (as in the Track and Monitor proposal), its attributes and/or associated RECs toward the REST constitutes a claim, eroding the value of an associated voluntary market REC. Such is the case even if the associated RECs contractually remain with the installer or generation owner. The statement "Such REC may not be considered used or extinguished by any entity without approval and proper documentation from the entity creating the REC." will not alleviate concerns about REC value for buyers of RECs who wish to use them outside of the Arizona REST, including other state RPS markets and in the voluntary market for RECs.

The Voluntary Market in Arizona

The Arizona voluntary market exists and is vibrant. As noted in Ms. Martin's testimony, in 2011, Green-e Energy verification data demonstrates that there are thousands of customers voluntarily purchasing renewable energy in Arizona, and Arizona renewable generators generated 29,997 MWh that were sold into the voluntary REC market.[1] There may also be other voluntary purchasers in Arizona and renewable energy generation sold into the voluntary market from in-state generators that are not Green-e Energy certified.

Some examples of sellers in the voluntary market include Arizona Public Service Company, whose Green Choice Program is Green-e Energy certified. Also Salt River

[1] Center for Resource Solutions, data aggregated from Green-e Energy verification of 2011 certified sales.

Project's EarthWise program is certified by Green-e Energy. According to the EPA's Green Power Partnership list, voluntary renewable energy market purchasers in Arizona include: Apollo Group, Inc., University of Phoenix, Arid Zone Trees, Arizona Lithographers, ConserVentures, Evolution Beauty Technologies, Inc., Forever Resorts/Big Bend Resorts, Chisos Mountain Lodge, Forever Resorts / Grand Canyon North Rim, LLC, International Student Exchange Cards, Inc., and Prime Time Thermographics.

The primary market in the United States for voluntary RECs is for Green-e Energy Certified RECs. According to the National Renewable Energy Laboratory and verification data obtained through annual Green-e Energy reporting, Green-e Energy certifies and verifies roughly two-thirds of the U.S. voluntary retail renewable energy sales overall and more than ninety percent of U.S. voluntary retail renewable energy certificate (REC) sales.[2]

Undisputed ownership of and title to renewable energy attributes, including REC ownership, the claim to own or use renewable energy, and the ability to sell that claim, including to parties outside of Arizona, is critical to Arizona businesses and individuals who invest in on-site renewable energy. The adoption of policy by the Commission that brings into question those rights will significantly reduce the value of renewable energy for DE owners in the state and will hinder future economic growth in this sector in Arizona.

Arizona citizens and businesses have an interest in having clear title to the property rights associated with renewable energy attributes, RECs and claims associated with their onsite or owned renewable energy generation. As an example of this, both the U.S. Government and Wal-Mart have expressed such directly to the Commission as parties in this proceeding. In addition, the U.S. Environmental Protection Agency wrote to the Commission and expressed similar concerns. Proposals before the Commission, including Track and Monitor and Track and Record, appear to be intended to meet the REST requirements by "counting" or "monitoring" renewable energy generation by facilities owned by third parties (not utility owned) and using that "counting" or "monitoring" to determine a utility's REST compliance. CRS's Green-e Energy program rules on which Ms. Martin offered testimony are just one example of how adoption of such policies will be viewed by market and regulatory entities as a claim on renewable energy attributes, including RECs.

For the U.S. national voluntary market and several state renewable energy regulatory markets that Arizona solar generators are eligible to participate in (including California, Oregon, Colorado, North Carolina and Missouri) such counting threatens these property rights and will likely preclude Arizona generation owners from being able to access these markets. In addition, for companies like Wal-Mart and others in Arizona that own on-site generation, adoption of such policies by the Commission will erode the benefits these companies expected to receive from their on-site generation and could preclude them from using that generation to qualify for recognition programs, like the

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[2] National Renewable Energy Laboratory, *Market Brief: Status of the Voluntary Renewable Energy Certificate Market (2011 Data)* available at http://www.nrel.gov/docs/fy12osti/56128.pdf at 5; and Center for Resource Solutions, *2011 Green-e Verification Report* http://www.green-e.org/publications.shtml at 4-6, (accessed June 5, 2013).

EPA Green Power Partnership, or from reporting that renewable generation for other recognition or sustainability reporting programs.

Conclusion

A decision by the Commission that effectively counts renewable energy generation to meet the REST will have negative consequences for Arizona generation owners.

This will be the case even if the adopted language uses alternative terminology in an attempt to both preserve private rights to renewable energy generation and count that same generation towards a utility's obligations under the REST. Any policy that creates confusion as to the ownership rights of Arizona generators over their RECs and/or renewable energy attributes or claim to owning or using renewable energy generation will only result in a loss of value for DE owners in the state and reduce economic opportunities for Arizona citizens and businesses who wish to claim or sell their renewable energy generation ownership rights.

The Commission should adopt a decision that uses clear language to explain the intent of the policy

Such language should include whether or not any action by the utilities or Commission, including but not limited to tracking or monitoring or other types of reporting with regard to Arizona solar generation, is being used as a basis to determine REST compliance. In the interest of clarity, maintaining consistency with and access to the overall renewable energy markets in which Arizona generators can participate, and maintaining strong property rights to renewable energy attributes and claims for Arizona renewable energy owners, CRS urges the Commission to maintain its current policy to require the utilities to acquire RECs to demonstrate REST compliance.

CRS joins Wal-Mart, the U.S. Department of Defense, Western Resource Advocates and Vote Solar and SEIA as well as non-parties such as the US Environmental Protection Agency have also requested that the Commission consider the impacts of double counting on the voluntary market in Arizona.

Thank you,

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TABLE OF CONTENTS

I. INTRODUCTION

The following is the Solar Energy Industries Association's ("SEIA") response to the Post-Hearing Briefs filed by Staff, Arizona Public Service Corporation ("APS"), and Tucson Electric Power Company and UNS Electric, Inc. ("TEP/UNS"). SEIA[1] urges the Arizona Corporation Commission ("Commission") to consider the issues presented while keeping in mind that the intent of the Renewable Energy Standard Tariff Rules ("REST" or "REST Rules") is to develop a sustainable renewable energy market.

II. ARGUMENT

A. The Parties Agree that the DE Carve-Out Should Not be Eliminated at this Time

At this stage in the proceeding, no party asserts that the distributed energy REST requirement ("DE carve-out") should be eliminated at this time.[2] Some parties, such as TEP/UNS and NRG Solar LLC, recommend a rulemaking once it is shown that incentives no longer drive the market.[3] Further, APS has abandoned its original position to remove the DE carve-out and has adopted Staff's Track and Monitor proposal.[4]

However, no party asserts that the DE carve-out should be eliminated at this time. Based on this unanimous agreement, and because the impact of incentives on DE adoption is currently unknown, the Commission should not eliminate the DE carve-out at this time.

B. The Commission Should Not Adopt Staff's Track and Monitor Proposal Because it Will Harm Arizona Ratepayers and Drive Away Investment in Arizona's Economy by Allowing Utilities to Count Distributed Energy Towards Compliance Without Compensating System Owners

Throughout this proceeding, parties representing Arizona ratepayers and the Arizona solar market have clearly stated that the Commission should not allow utilities to count

[1] The comments contained in this filing represent the position of SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

[2] APS Post Hearing Brief at 2; TEP/UNS Post Hearing Brief at 26-27; Staff Post-Hearing Brief at 12; NRG Post-Hearing Brief at 12; Western Resource Advocates/Vote Solar Post-Hearing Brief at 21; Wal-Mart Stores, Inc. Post-Hearing Brief at 3; Kevin Koch Post-Hearing Brief at 4; SEIA Post-Hearing Brief at 4; Note that Dept of Defense/Federal Executive Agencies Post-Hearing Brief did not weigh in on this issue.

[3] TEP/UNS Post-Hearing Brief at 2; NRG Solar LLC Post-Hearing Brief at 12

[4] APS Post-Hearing Brief at 2

generation of distributed energy without compensating system owners.[5] Doing so would be harmful to Arizona ratepayers and will drive away investment in Arizona's economy.[6]

i. Staff Recognizes that Track and Monitor May Result in Counting Distributed Energy Towards the REST Without Compensating System Owners, and Thus May Not be a Viable Option

In its Post-Hearing Brief, Staff continues to promote its Track and Monitor proposal. Under Track and Monitor, a utility's DE requirement under the REST Rules is reduced on a kWh per kWh basis for DE produced in the utility's service territory where no transfer of Renewable Energy Credits ("RECs") takes place.[7] However, Staff indicates that if the Commission determines that Track and Monitor constitutes a count of distributed energy ("DE") without compensating system owners, Staff withdraws its support of Track and Monitor and recommends a temporary waiver of the DE carve-out requirements.[8]

Throughout this proceeding, ratepayer advocates, solar developers, policy experts, REC certifiers, governmental agencies, and trade associations that are invested in Arizona's solar market and economy have all echoed the same message: distributed energy that is credited towards compliance, whether by crediting DE to the REST or by a reduction of the REST, is considered counted and the system owners must be compensated.[9]

Track and Monitor counts DE by reducing the REST requirement and fails to compensate system owners. Therefore, Track and Monitor should not be adopted.

ii. APS Fails to Recognize that Double Counting is a Significant Issue that Will Harm Ratepayers and Drive Away Investment in Arizona's Economy by

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[5] Fellman Cross at 517-520; Baker Cross at 378; Cordova Cross at 401-402; Staff Post-Hearing Brief at 7; Huber Cross at 594; Vote Solar/Western Resource Advocates Post-Hearing Brief at 8; TEP/UNS Direct at 7; SEIA Rebuttal Testimony at 1; NRG Post-Hearing Brief at 9; SEIA Post-Hearing Brief at 10; DOD/FEA Post-Hearing Brief at 7; Staff Post-Hearing Brief at 9; RUCO Post-Hearing Brief at 7; Vote Solar/Western Resource Advocates Post-Hearing Brief at 18; Martin Cross at 810; Wal-Mart Post-Hearing Brief at 5; *See* Renewable Energy Markets Association Letter to the Commission April 29, 2013

[6] For further discussion of this issue, see SEIA Post-Hearing Brief at 8

[7] Gray Direct at 7; Gray Cross at 694; Staff Post-Hearing Brief at 3

[8] Staff Post-Hearing Brief at 9

[9] NRG Post-Hearing Brief at 9; SEIA Post-Hearing Brief at 10; DOD/FEA Post-Hearing Brief at 7; Staff Post-Hearing Brief at 9; RUCO Post-Hearing Brief at 7; Vote Solar/Western Resource Advocates Post-Hearing Brief at 18; Martin Cross at 810; Wal-Mart Post-Hearing Brief at 5; *See* Renewable Energy Markets Association Letter to the Commission April 29, 2013

Allowing Utilities to Count DE Towards Compliance Without Compensating System Owners

APS attempts to minimize the importance of properly tracking DE and adequately compensating system owners by asserting that concern over double counting is not a sufficient reason to reject Staff's Track and Monitor proposal.[10] As explained in SEIA's Post-Hearing Brief, double counting is a significant concern because it directly impacts Arizona ratepayers and will drive away investment in Arizona's economy.[11]

First, APS argues Arizona DE REC owners cannot sell their RECs because no market exists.[12] This argument is not borne out by the facts. It has been established in this proceeding there are state and national REC markets which are open to Arizona REC holders.[13] In addition, Arizona's compliance market is a significant driver of investment and economic growth in Arizona.[14]

Citing R14-2-1803(C), APS also argues that it would be unlawful to sell RECs to non-utility buyers.[15] Nowhere does this R14-2-1803(C) state that Arizona DE RECs cannot be sold to non-utility purchasers. In fact, several witnesses testified that RECs can be sold to non-utility third parties.[16]

Third, APS argues that it is unclear what impact double counting would have on Arizona's market because other markets, such as Hawaii, do allow double counting.[17] While it is possible that Arizona's market would survive a policy that allows counting DE without compensating system owners, given the amount of concern over double counting from a variety of parties who actively participate in Arizona's solar and REC markets, it seems a risk the Commission should not take. Further, the Commission has plenty of time and options available to it, and does not need to make a rash decision based on speculation by APS.

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[10] APS Post-Hearing Brief at 4
[11] SEIA Post-Hearing Brief at 8
[12] APS Post-Hearing Brief at 4
[13] Martin Cross at 809-811, 821; 856; R14-2-1803(C); *See* CRS Letter to the ACC dated May 21, 2013
[14] Ahsing Cross at 422-423, 440; Fellman Cross at 517-520
[15] APS Post-Hearing Brief at 4; A.A.C R14-2-1803(C)
[16] Fellman Cross at 517-520; Martin Direct at 809-810, 856; Ahsing Cross at 440
[17] APS Post-Hearing Brief at 4

Fourth, APS argues that the double counting issue can be settled with a "statement of intent."[18] However, APS never goes on to explain exactly how such a statement would settle the concern over double counting. If anything, APS merely misconstrues CRS' testimony on this point, in which Ms. Martin explained the intent of the rules must be to ensure that renewable energy is counted for only one purpose, and that system owners are adequately compensated for their DE production.[19]

Fifth, APS ignores the potential impact on the private property rights of Arizonans. If a solution is implemented that, either intentionally or unintentionally, counts RECs without compensating the owner of the solar system, that solution will result in depriving the owner of the system of his property right interest in the REC. SEIA suggests that the Commission should favor policies that do not deprive private citizens and ratepayers of their private property without just compensation.

Finally, APS questions whether CRS should be consulted on these issues at all because of the fact that CRS is based in California. APS argues that because CRS is an entity that is based in the state of California, if the Commission agrees with CRS that Track and Monitor will result in a counting of RECs, the Commission would really be modeling Arizona's energy goals after California and the priorities of a California non-profit.[20] The fallacy of this argument should be immediately apparent. This argument misconstrues the double counting issue and CRS' role in this proceeding entirely. The issue of properly accounting for renewable energy generated in Arizona is an Arizona issue that directly impacts Arizona's ratepayers and economy. CRS is a REC policy expert that deals with REC markets throughout the country and certifies 90% of all voluntary RECs traded in the country while also certifying RECs for APS itself.[21] It is logical to consult the leading experts on REC markets in a proceeding centered on REC policy, especially considering the potential impact on Arizona's ratepayers. APS's attempt to play politics with CRS's place of business should be rejected. No matter where CRS is headquartered, the record clearly reflects it is the expert in the nation on REC certification. In fact, aside from CRS, no

[18] Id.
[19] Id.; Martin Cross at 825
[20] APS Post-Hearing Brief at 5
[21] Martin Cross at 865-866; Bernosky Cross at 118

other expert in the certification of RECs testified at this hearing. The expert opinion on this issue is simply uncontroverted by any other experts.

APS attempts to minimize the importance of properly tracking DE and adequately compensating system owners. However, these issues are fundamental to ensuring the integrity of RECs, a functioning solar market, and protecting Arizona ratepayers. Based on the overwhelming evidence from the only expert to testify on the subject, Track and Monitor counts distributed energy towards the REST without compensating system owners, and therefore should not be adopted.

iii. TEP/UNS Fails to Acknowledge that Track and Monitor Will Harm Ratepayers and Drive Away Investment in Arizona's Economy by Allowing Utilities to Count DE Towards Compliance Without Compensating System Owners

In its Initial Brief, TEP/UNS undertakes a long convoluted analysis to arrive at the conclusion that Track and Monitor will not negatively impact Arizona utility customers because it does not count DE towards the REST, a position that is at odds with the only REC policy expert that testified in this matter.

First, TEP/UNS argues that Arizona RECs need not be certified by CRS to comply with the REST, pointing to differences between the compliance and voluntary markets such as "bundling."[22] Further, TEP/UNS argues that the definition of RECs in voluntary and compliance markets vary.[23] These assertions have no bearing on whether Track and Monitor counts DE towards the REST. Under Track and Monitor, utilities are relieved of a compliance requirement for the DE generated in their service territory. Most parties to this proceeding, representative of a wide swath of Arizona's ratepayers, solar customers, and policy experts, agree that reducing a utility's compliance requirement by crediting DE generation in its territory constitutes a count and requires compensation of the system owner.[24] Most importantly, the only expert on REC

[22] TEP/UNS Post-Hearing Brief at 9

[23] Id.

[24] NRG Post-Hearing Brief at 9; SEIA Post-Hearing Brief at 10; DOD/FEA Post-Hearing Brief at 7; Staff Post-Hearing Brief at 9; RUCO Post-Hearing Brief at 7; Vote Solar/Western Resource Advocates Post-Hearing Brief at 18; Martin Cross at 810; Wal-Mart Post-Hearing Brief at 5; *See* Renewable Energy Markets Association Letter to the Commission April 29, 2013

certification to testify in this matter concluded that Track and Monitor would result in a counting of the solar customer's RECs without compensation.[25]

Second, TEP/UNS argues that Track and Monitor does not constitute double counting because under Track and Monitor utilities do not claim DE for compliance.[26] Once again, this argument is contrary to a widely held perspective that has been established again and again in this proceeding: crediting distributed energy towards compliance, either by crediting the energy to the REST with RECs or by reducing REST requirements according to DE generation, is a count of DE that requires compensation of the system owner.[27]

TEP/UNS goes on to argue that under Track and Monitor, DE's "renewable attributes" are not counted towards compliance under the REST Rules where there is no REC transfer.[28] Rather, the utilities' REST requirements are reduced according to production of DE for which TEP/UNS does not acquire RECs.[29] TEP/UNS is making a distinction without a difference. As TEP/UNS states in its own argument, "...RECs that the utility acquires from the customer or system owner fit the REC definition under the REST rules – and do represent energy derived from renewable sources".[30] Thus, by TEP/UNS' own admission, reducing the REST requirement by DE production is the equivalent of counting renewable energy towards the REST. RECs not only represent energy production, RECs represent production of ***renewable energy*** with ***renewable attributes***. In fact, this is the very purpose of the REST – to promote installation of energy with renewable attributes. Therefore, whether the REST requirement is reduced under Track and Record or met through RECs, renewable energy is being produced and used to meet the utility's REST requirement. Reducing a utility's REST requirement by tracking DE in its territory ***is*** counting that energy towards the REST. This is why the non-utility parties,

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[25] Martin Cross at 810

[26] TEP/UNS Post-Hearing Brief at 10-11

[27] NRG Post-Hearing Brief at 9; SEIA Post-Hearing Brief at 10; DOD/FEA Post-Hearing Brief at 7; Staff Post-Hearing Brief at 9; RUCO Post-Hearing Brief at 7; Vote Solar/Western Resource Advocates Post-Hearing Brief at 18; Martin Cross at 810; Wal-Mart Post-Hearing Brief at 5; *See* Renewable Energy Markets Association Letter to the Commission April 29, 2013

[28] TEP/UNS Post-Hearing Brief at 11

[29] Id.

[30] TEP/UNS Post-Hearing Brief at 10-11 at 9

including the only REC policy expert to testify agree that Track and Monitor counts distributed energy towards the REST without adequately compensating system owners.

TEP/UNS goes on to argue that policies from CRS' Green-e Program, the Federal Trade Commission (FTC), and Western Renewable Energy Generation Information System ("WREGIS") do not apply to Arizona's compliance market and therefore are irrelevant to this proceeding.[31] Once again, TEP/UNS either misses the point or is attempting to distract the Commission from the issue at hand: if solar customers and investors cannot sell their Arizona RECs to help finance their solar projects because the utilities are counting the RECs without compensation, they will look to invest in other solar markets.[32] These investors and customers look to organizations that are highly knowledgeable about REC markets, such as CRS, the FTC, and WREGIS to help determine the validity of RECs in a given market.[33] Therefore, the policies of these organizations carry value and can be used to help guide the Commission's decision on this very important and technical issue.

Finally, TEP/UNS argues that Track and Monitor does not amount to a taking, and that it is aligned with the intent of the REST Rules.[34] Contrary to TEP/UNS' assertion, customers do have property rights in their RECs, and the Commission should not adopt any policy that takes ratepayer property, RECs or otherwise, without just compensation.[35] Further, under Arizona's REST rules, utilities cannot take credit for distributed energy generated by their customers without a REC transaction. Section R14-2-1803(C) of the REST Rules states that RECs must be transferred through a transaction. This helps to incentivize investment and protect Arizona ratepayers. To allow a utility to comply through a reduction in its REST requirement without compensating system owners, rather than by crediting RECs to the REST, is to allow the utilities to create and exploit a loophole that undermines the intent of the REST Rules. Ratepayers will not be properly incentivized or compensated if utilities are allowed to comply through a reduction in the REST without purchasing RECs or otherwise compensating system owners.

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[31] Id. at 13-16
[32] SEIA Post-Hearing Brief at 9-10
[33] Baker Cross at 385; Cordova Cross at 406
[34] TEP/UNS Post-Hearing Brief at 5; 16
[35] *See* Renewable Energy Markets Association Letter to the Commission April 29, 2013; Martin Cross at 812

Track and Monitor counts distributed energy towards the REST without compensating system owners, and therefore should not be adopted.

C. The Commission Should Either Take No Action or Issue The Utilities Annual Waivers As Needed

The Commission need not take any action at this time because the utilities are in compliance through 2013 in some market segments, and for several years in other segments.[36] There are other proceedings that should be resolved before the DE compliance issue, and the Commission can afford to wait.[37] APS, TEP/UNS, and Staff assert that waiting will involve more cost and administrative burden.[38] However, a permanent decision may prove much more costly than waiting should the DE market falter.

If the Commission chooses to take action, it should issue an annual waiver to the utilities as needed and require the utilities to report DE installations for informational purposes only.[39] The waiver approach has the following advantages:

1. An annual waiver is widely supported, including support from Staff and TEP/UNS
2. An annual waiver will achieve Staff's goals
3. An annual waiver will allow the Commission to monitor the DE market
4. An annual waiver can be written so as to avoid double counting
5. An annual waiver creates no additional uncertainty, cost, or administrative burden
6. An annual waiver is provided for in Section R14-2-1816 of the REST Rules
7. An annual waiver satisfies any compliance issues the utilities may face

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[36] Bernosky Cross at 103, 151; Tilghman Cross at 201, 226, 252, 278

[37] Gillian Cross at 283; Bernosky Cross at 77-78; Huber Cross at 636; Gray Cross at 702; Cullen Hit Direct at 9;Barry Direct at 450

[38] APS Post-Hearing Brief at 5; TEP/UNS Post-Hearing Brief at 18; Staff Post-Hearing Brief at 12; Gray Rebuttal Testimony at 3

[39] It should be noted that APS does not even address the proposal that annual waivers be issued and mischaracterizes the world of options presented to the Commission.

III. CONCLUSION

SEIA appreciates the Commission's extensive consideration on the issues in this proceeding. Throughout this proceeding, it has been shown that Arizona's DE market has a bright future. However, it also has been shown that the strength of the market is unknown, and that several ongoing proceedings will impact Arizona solar. Therefore, SEIA urges the Commission to preserve the DE carve-out, take no action or grant the utilities a one-year waiver, and reject Track and Monitor at this time.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY REQUEST FOR APPROVAL OF UPDATED GREEN POWER RATE SCHEDULE GPS-1, GPS-2, AND GPS-3.	**DOCKET NO. E-01345A-10-0394**
IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR APPROVAL OF ITS 2013 RENEWABLE ENERGY STANDARD IMPLEMENTATION FOR RESET OF RENEWABLE ENERGY ADJUSTOR.	**DOCKET NO. E-01345A-12-0290**
IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY FOR APPROVAL OF ITS 2013 RENEWABLE ENERGY STANDARD IMPLEMENTATION PLAN AND DISTRIBUTED ENERGY ADMINISTRATIVE PLAN AND REQUEST FOR RESET OF ITS RENEWABLE ENERGY ADJUSTOR.	**DOCKET NO. E-01933A-12-0296**
IN THE MATTER OF THE APPLICATION OF UNS ELECTIC, INC. FOR APPROVAL OF ITS 2013 RENEWABLE ENERGY STANDARD IMPLEMENTATION PLAN AND DISTRIBUTED ENERGY ADMINISTRATIVE PLAN AND REQUEST FOR RESET OF ITS RENEWABLE ENERGY ADJUSTOR.	**DOCKET NO. E-04204A-12-0297**

THE U.S. DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES' BRIEF

I. SUMMARY OF ARGUMENT

Arizona has established its Renewable Energy Standard and Tariff ("REST") rules, requiring utilities to serve a percentage of their customers load with renewable energy. The REST rules additionally require that a portion of this renewable energy come from commercial and residential customer sited generation sources. Renewable Energy Credits – defined in the rules as "the unit created to track kWh derived from an Eligible Renewable

Energy Resource" – are used to track compliance with the REST requirements.[1] Traditionally, utilities have paid incentives to obtain the RECs derived from customer sited generation.

The United States Department of Defense and all other Federal Executive Agencies ("DoD/FEA") have their own requirements and goals, established by Federal statute and Executive Order, to serve a certain percentage of their total electric consumption from renewable energy sources. Pursuant to Department of Energy Guidelines, DoD/FEA uses its RECs for compliance, or to make projects economically viable by transferring them for value. RECs that are used to meet state requirements cannot be counted toward DoD/FEA's Federal compliance requirements or transferred for value; if RECs are claimed for two purposes, i.e. for a utility's REST requirements and Federal requirements, double counting would occur.

To meet their Federal requirements and goals, DoD/FEA have made significant investments in renewable energy projects in Arizona, including: The Department of Veterans Affairs ("VA") has invested over $50 million to develop approximately 10.6 MW of solar photovoltaic generating capacity, with future investments planned; a 14.5 MW solar photovoltaic project is currently being constructed on Davis-Monthan Air Force Base; and the Army is planning construction of approximately 20 MW of solar photovoltaic generating capacity at Fort Huachuca and/or Yuma Proving Ground.

Now, changes to the REST are being contemplated that may compromise the integrity of all RECs from customer sited generation in Arizona, including DoD/FEA's. Several policy proposals have been presented by various parties in this docket for how RECs should be obtained and used for utilities' compliance requirements in Arizona,

[1] See Arizona Administrative Code §§ R14-2-1801(N) and R14-2-1804.

absent utilities paying up front incentives in exchange for long term REC purchase agreements. Given DoD/FEA's significant investments in renewable energy in Arizona, and their use of RECs for their own Federal compliance requirements, DoD/FEA assert that any policy adopted by the Commission should maintain the viability of RECs and should not result in double counting. In the alternative, a waiver from any policy that takes RECs without just compensation and an explicit transfer agreement should be granted for customers with their own compliance requirements like DoD/FEA. Any policy that results in double counting, or that automatically transfers RECs to utilities without just compensation, would deprive DoD/FEA of a benefit of its investments in renewable energy, and may result in future renewable projects planned in Arizona being canceled or diverted to another state. At an absolute minimum, any change in policy that results in a transfer of RECs without just compensation should only apply to future projects where no agreements have been executed, and not to existing projects or existing contractual relationships.

II. THE U.S. DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES' RENEWABLE ENERGY REQUIREMENTS

The Energy Policy Act of 2005 ("EPACT 2005") requires, in part, that 7.5% of all energy consumed by the Federal government each year originate from renewable energy sources.[2] Executive Order 13423 ("EO13423") requires that half of the 7.5% renewable requirement originate from renewable energy sources placed in service after January 1, 1999, and promotes development of renewable generation projects on Federal Agency

[2] Renewable Energy Requirement Guidance for EPACT 2005 and Executive Order 13423 marked as DoD/FEA Exhibit 4 at pg. 1.

property for that agency's use.[3] Renewable Energy Credits ("RECs") are used to determine compliance with both EPACT 2005 and EO13423.[4]

DoD/FEA has received specific guidance ("Guidance") from the Department of Energy ("DOE") on how RECs must be used to comply with the requirements of EPACT 2005 and EO13423.[5] The DOE Guidance explicitly contains a prohibition against double counting, stating as follows:

> RECs that count toward the EPACT 2005 and EO13423 Requirements cannot be double counted[.] .... *It is important to protect the credibility of RECs in the general market where they are traded, and double counting could jeopardize that credibility.* (emphasis added)[6]

The DOE Guidance goes on to define double counting as occurring when:

> a) more than one party at the same time claims the renewable energy attributes from renewable energy generation (as either RECs or as renewable energy), i.e., the renewable energy is "double sold" to other customers; or
> b) *the renewable energy counted toward the agency's goal is also used to meet a renewable portfolio standard or other federal, state, or local regulatory requirement*, except for the exemptions provided to projects initiated prior to final publication of this guidance; or
> c) non-energy attributes such as emissions credits/allowances or other environmental attributes are further disaggregated from the renewable attributes by the renewable energy/REC supplier and sold separately. (emphasis added)[7]

Additionally, the DOE Guidance requires DoD/FEA to retain their RECs, stating:

> It is expected that Federal renewable energy use under EPACT 2005 and EO13423 will result in renewable energy use beyond the existing state renewable portfolio standard (RPS) goals. Any RECs sold or relinquished to meet State RPS goals or corporate renewable energy goals that are not replaced with other RECs do not contribute to the goals established by EPACT 2005 or EO13423. This is to prevent Federal agencies from claiming credit for renewable energy attributes that are also claimed by

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[3] *Id.* at pg 1 -3.
[4] *Id.* at pg. 4.
[5] *Id.*
[6] *Id.* at pg. 6.
[7] *Id.* at pg. 7.

other parties such as states or corporations (see Section 3.1.4.2). Therefore, agencies are required to retain ownership of the RECs from projects in order to count them toward EPACT 2005 or EO13423 Requirements.[8]

DoD/FEA use RECs in accordance with this Guidance to count toward compliance with the EPACT 2005 and EO13423. In some instances, DoD/FEA installations sell RECs, either to a third party or to a utility, where such an arrangement increases the economic viability of a project. When RECs are transferred for value to make renewable projects more cost effective, a DoD/FEA department may purchase replacement RECs on the open market to count toward its compliance requirements. REC integrity is essential to DoD/FEA's use of RECs; if REC integrity is compromised by allowing a utility to claim RECs without an explicit transfer supported by adequate consideration, those RECs could not be used toward Federal compliance requirements or transferred for value.

III. THE U.S. DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES' RENEWABLE ENERGY PROJECTS IN ARIZONA

For obvious reasons to anyone who lives or has visited this great state, Arizona is a very attractive place to build solar energy facilities. To take advantage of the abundance of consistent, reliable sunshine, DoD/FEA has invested in solar facilities in Arizona, with plans for future investments. These investments were made, in part, due to the existing REST rules that allow for DoD/FEA to use RECs generated at their Arizona facilities for Federal compliance requirements, or to transfer them for value as needed and DOE guidance allows.

Among the DoD/FEA agencies and departments that have made investments in Arizona solar, the VA has invested over $50 million on existing solar projects without

[8] *Id.* at pg. 8. Agencies are allowed to swap or trade RECs in certain instances, as described in Section 3.2.2.

taking incentives from utilities.[9] The VA has built customer sited solar photovoltaic generation in Phoenix, Prescott, and Tucson, amounting to over 10.6 MW of capacity collectively.[10] VA also has future investments in solar generation planned in Arizona.[11]

The Department of the Air Force ("AF") is in the process of having a 14.5 MW solar photovoltaic facility constructed on Davis-Monthan Air Force Base. For the Davis-Monthan Project, AF has transferred the RECs to a third party to reduce the costs of energy purchased from the third party, and the third party has transferred those RECs for value to Tucson Electric Power. These transfers are made pursuant to fully executed enforceable contracts.

The Department of the Army ("Army") is in the process of planning several installations in Arizona. Projects are being evaluated at Fort Huachuca and Yuma Proving Ground.[12] RECs play a critical role in Army's planning of future projects in Arizona.[13] Army is exploring different options for using RECs to make projects more cost effective or for Federal compliance requirements.[14]

IV. ANY POLICY ADOPTED BY THE COMMISSION SHOULD PROTECT AGAINST DOUBLE COUNTING OF RENEWABLE ENERGY CREDITS

This consolidated docket was initiated to respond to the inquiry by the Commission of how utilities should acquire RECs in the future, absent providing up-front incentives, and what REST rules would need to change in order to effectuate this process. It is significant to note that the REST requirement that 15% of a utility's annual retail kWh

[9] Direct Testimony of Cynthia J. Córdova marked as DoD/FEA Exhibit 1 at pg. 2.
[10] *Id.*
[11] *Id.*
[12] Direct Testimony of Kathy Ahsing, P.E. marked as DoD/FEA Exhibit 2 at pg. 5.
[13] *Id.* at 6.
[14] *Id.*

sales be derived from renewable sources by 2024 is still in its early stages, with only 4% being required this year and 4.5% in 2014.[15]

In response to the Commission's inquiry, the utilities, staff, and several interveners have proposed various different approaches, which have been explained in more detail by the presenting party. Some of these proposals, namely Staff's proposal and Tucson Electric Power Company's ("TEP") proposal, may grant utilities' the ability to claim RECs without entering into an explicit agreement, supported by consideration, for them and to use those RECs toward their compliance requirements. RECs, or the renewable attribute of energy, used by utilities for REST compliance cannot be used by DoD/FEA for any other purpose, or double counting would occur. For this reason, DoD/FEA strongly opposes any policy that would allow utilities to claim RECs without an explicit agreement supported by adequate consideration. In addition to the problem of double counting, a policy that allows utilities to take RECs without a transfer supported by consideration may result in a regulatory taking. For the aforementioned reasons, DoD/FEA opposes Staff's proposal and TEP's proposal.

Any proposal that would result in DoD/FEA's inability to use their RECs due to double counting should not be adopted by the Commission. DoD/FEA have made significant investments in renewable generation in Arizona, and any policy that resulted in double counting would deprive DoD/FEA of this investment and may detrimentally affect existing contractual agreements. Moreover, if a policy that resulted in double counting were adopted, it is likely that any plans for DoD/FEA to develop additional renewable energy projects in Arizona would be abandoned. At a bare minimum, if the Commission chooses to adopt a policy that erodes or destroys REC integrity, such policy should not

[15] See Arizona Administrative Code R14-2-1804.

affect existing projects or planned projects where binding agreements are in place. Investments and agreements that have already been made based on the policies currently in effect should not be affected or undermined by any changes ultimately adopted.

While DoD/FEA does not advocate for any specific policy on RECs in Arizona, it does not oppose proposals that do not implicate double counting. Policies that maintain the integrity of RECs and a party's ability to use its RECs as it sees fit are the only policies that should be considered acceptable by the Commission. Among the acceptable policies are market based proposals where a firm offer or auction process would be established for utilities to procure RECs, Arizona Public Service Company's proposal, and the Residential Utility Consumer Office's ("RUCO") modified baseline proposal.[16]

V. CONCLUSION

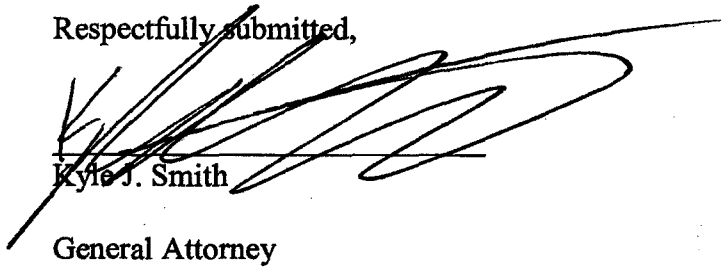
DoD/FEA has invested heavily in solar photovoltaic generation in Arizona, with substantial projects planned in the future. RECs are used by DoD/FEA for its own Federal renewable energy requirements, or to increase the economic viability of projects. Any change in REC policy that results in double counting of RECs could severely inhibit the growth of renewable generation in Arizona, and may result in the abandonment of future DoD/FEA projects planned in Arizona.

Arizona, with its abundance of sun, is a leader in solar renewable energy, and it should not adopt policies that could diminish its standing. Any policy regarding RECs adopted by the commission should maintain REC integrity and avoid double counting.

[16] RUCO presented a witness from the Center for Resource Solutions ("CRS"), Jennifer Martin. CRS certifies more than ninety percent of U.S. voluntary retail REC sales. Jennifer Martin was called on to testify on whether individual proposals would result in double counting. As a national leader in certification of RECs to ensure that double counting doesn't occur, it would be prudent give weight to this testimony and to seek guidance from CRS on whether any proposal chosen by the Commission results in double counting before such proposal is adopted, to ensure REC integrity is safeguarded.

Several proposals put forward in this docket achieve this goal. While the Commission should not adopt a policy that diminishes or destroys REC integrity in Arizona, if such a policy is adopted, it should not affect existing projects or agreements in place before the new policy is in effect.

Respectfully submitted,



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For
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And
All Other Federal Executive Agencies